

In the High Court of Punjab and Haryana at Chandigarh

CWP No. 13031 of 2006

Date of decision: 21.8.2006

Virender Singh Dahiya

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE M.M.S. BEDI

PRESENT: Mr. J.S. Duhan, Advocate,

for the petitioner.

JUDGMENT

M.M. KUMAR, J.

The prayer made in this petition filed under Article 226 of the Constitution is for issuance of a writ in the nature of certiorari for setting aside order dated 29.8.2000 (P-6) passed by the Commissioner-cum-Director General School Education, Haryana (respondent No. 2) directing recovery of Rs. 51,952/- and the subsequent order dated 31.5.2006 (P-7) passed in appeal by the Commissioner and Secretary to Government Haryana (respondent No. 1) upholding the aforementioned order.

The petitioner has been working on the post of Assistant in the office of respondent No. 2. One Shri M.M. Singh filed C.W.P. No. 2688 of 1997. Another petition registered as C.W.P. No. 11215 of 1997 was also filed by one Shri S.J. Pathak. In both the petitions, claim was made before this Court for grant of benefit of gratuity in respect of the service rendered in private colleges before they were

taken over by the Government. The aforementioned relief was based on a judgment of Hon'ble the Supreme court in the case of **Chander Sain v. State of Haryana, (1994) 1 SCC 750**. The petitioner herein was required to assist in preparation of reply, which was filed on 14.10.1997 in the aforementioned cases. The stand taken in the reply was that the judgment of the Hon'ble Supreme Court in Chander Sain's case (supra) did not apply to the cases as pleaded in the aforementioned two petitions filed by Sarvshri M.M. Singh and S.J. Pathak. The Division Bench castigated the department and awarded interest to the petitioners in the aforementioned cases on account of delayed payment. However, it was stipulated that the payment of interest has to be made by the official who had defaulted in the decision. In that regard, the order dated 23.2.1998 passed by the Division Bench may first be noticed and the same reads as under:-

“ It is conceded by the learned State counsel that the matter is covered squarely by the decision of the Supreme Court in Civil Appeal No. 38 of 1994 (Chander Sain V/s State of Haryana) decided on January 7, 1994. The learned counsel for the petitioner however, contends that the petitioner had retired on 31st July 1996 and he had made representation to the respondents on 20th August, 1996 Annexure P-1 to the petition pointing out that he was entitled to payment of gratuity in the light of the decision of the Supreme Court aforementioned but the positive stand taken by the respondents is that the

said judgement was not applicable to the petitioner's case.

In view of the facts stated above, we are of the opinion that the respondents ought to have decided the matter in favour of the petitioner in the light of judgement of the Supreme Court. We are further of the opinion that the interest which would be due to the petitioner on account of the late payment should be paid by the official who defaulted in the decision. On this Ms. Bahri, seeks time to file a reply to the petition. May do so within three weeks. Adjourned to 30th March, 1998.

Sd/- H.S. Bedi

Judge

Sd/- Sawatanter Kumar

23rd Feb. 1998

Judge.”

An additional reply was filed on 11.3.1998 taking the plea that the direction issued by the Supreme Court in Chander Sain's case (supra) were applicable only to that case as no general directions were issued to pay gratuity in respect of periods spent in private educational colleges before they were taken over. Rejecting the aforementioned plea, the Division Bench on 30.3.1998 observed as under:-

“ In pursuance of the directions given by this Court by order dated 23rd February, 1998 in this case and also in CWP No. 2688 of 1997, the respondents have granted

sanction for payment of gratuity to each of the petitioners vide order dated 19th March, 1998. A copy of that order is taken on record. It is however, noted that sanction has been recorded only for payment of principal amount of gratuity and not of the interest thereon. The learned D.A.G. explains that the reason for non payment of interest is that the rate of interest was not specified and the department has already initiated enquiry for fixing the responsibility on the defaulting officials from whom the pecuniary loss to the government has to be recovered. The respondents are hereby directed to pay interest @ 12% p.a. on the amount found to each of the petitioners from the date of retirement to the date of actual payment within four weeks from today. The payment of interest shall be made initially by the Government of Haryana and the pecuniary loss caused thereby to the government may be recovered from the personal pay of the defaulting officer after fixing the responsibility in accordance with law.

For further directions, adjourned to July 15, 1998.

Sd/- Arun B. Saharya

Chief Justice

Sd/- H.S. Bedi

30.3.1998

Judge.”

In accordance with the direction issued by the Division

Bench of this Court, on 23.2.1998 a charge sheet was issued to the petitioner and a regular departmental inquiry was conducted by Shri O.P. Bhatia, Chief Accounts Officer. The Enquiry Officer in his report dated 27.3.1998 (P-3) has held that the petitioner alongwith others was responsible for causing delay to put up the papers under consideration/representation and that the petitioner alongwith others was responsible for mishandling and delaying the case. On the basis of the aforementioned findings of the Enquiry Officer, a show cause notice was issued to the petitioner by respondent No. 2 granting him an opportunity as to why punishment under Rule 4 of the Haryana Civil Services (Punishment and Appeal) Rules, 1987 (for brevity, 'the Rules') be not imposed upon him. The petitioner filed reply on 30.10.1998 (P-5). Having found the reply unsatisfactory, the punishment of recovery of 1/4th of the interest amount, amounting to Rs. 51,952/-, was imposed on him which was sought to be recovered in 24 monthly instalments beginning from August 2000. On appeal, respondent No. 1 found no reason to take a different view than the one taken by the punishing authority. Feeling aggrieved, the petitioner has approached this Court.

Having heard the learned counsel we are of the considered view that there is no merit in the instant petition. An inquiry in accordance with the Rules has been held and the petitioner has been afforded comprehensive opportunity in accordance with the requirement of Rule 7. After appreciating evidence, the Enquiry Officer has recorded categoric findings that the petitioner, who was working as a Record Keeper along with three others, was responsible

for mishandling and delaying the case of gratuity of two of employees, namely, Sarvshir M.M. Singh and S.J. Pathak. It is common knowledge that the State of Haryana despite binding decision by the Division Benches of this Court as well as that of Hon'ble Supreme Court, does not on its own implement the judgments pushing every employee to the portals of the High Court. It multiplies the litigation unnecessarily causing chaos and confusion. The State is the biggest litigant in the Courts. The reason for so doing may rest on apathy to take responsibility in the administrative hierarchy. It is not unknown that the officers/officials at various levels do not wish to accept the plain ratio of a judgment because of the fear of backlash of an accusing finger. It has also been noticed that the Finance Department in a number of cases attempts to deviate from the settled legal position in order to avoid payment of funds. Therefore, such type of melody has been rightly pointed out by the Division Bench and the department has also taken the decision in a right direction. The conclusions are not without evidence and this Court cannot sit over those conclusions of the Enquiry Officer as a Court of appeal by re-appreciating the evidence resulting into a view different than the one taken by the Enquiry officer. The punishment is only for recovery of the amount paid to Sarvshri M.M. Singh and S.J. Pathak, who were petitioners in C.W.P. Nos. 2688 of 1997 and 11215 of 1997 respectively, as interest on account of delay caused at the departmental level. There is no room to interfere and, therefore, the petition is dismissed.

For the reasons aforementioned, this petition fails and the same is dismissed.

(M.M. KUMAR)
JUDGE

August 21, 2006

(M.M.S. BEDI)
JUDGE

Pkapoor